

LEGISLATURE OF NEBRASKA  
 ONE HUNDREDTH LEGISLATURE  
 FIRST SESSION  
**LEGISLATIVE BILL 240**

Introduced By: Langemeier, 23  
 Read first time: January 10, 2007  
 Committee: Revenue

A BILL

1       FOR AN ACT relating to revenue and taxation; to amend section  
 2               77-3806, Reissue Revised Statutes of Nebraska, and sections  
 3               77-908, 77-2701, 77-2715.07, 77-2717, and 77-2734.03,  
 4               Revised Statutes Cumulative Supplement, 2006; to provide an  
 5               income tax credit for certain capital gains; to harmonize  
 6               provisions; to provide an operative date; and to repeal the  
 7               original sections.

8       Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 77-908, Revised Statutes Cumulative  
2 Supplement, 2006, is amended to read:

3           77-908. Every insurance company organized under the stock,  
4 mutual, assessment, or reciprocal plan, except fraternal benefit  
5 societies, which is transacting business in this state shall, on or  
6 before March 1 of each year, pay a tax to the director of one percent  
7 of the gross amount of direct writing premiums received by it during  
8 the preceding calendar year for business done in this state, except  
9 that (1) for group sickness and accident insurance the rate of such  
10 tax shall be five-tenths of one percent, (2) for property and casualty  
11 insurance, excluding individual sickness and accident insurance, the  
12 rate of such tax shall be one percent, and (3) for capitation payments  
13 made in accordance with the Medical Assistance Act, the rate of tax  
14 shall be five percent. The taxable premiums shall include premiums  
15 paid on the lives of persons residing in this state and premiums paid  
16 for risks located in this state whether the insurance was written in  
17 this state or not, including that portion of a group premium paid  
18 which represents the premium for insurance on Nebraska residents or  
19 risks located in Nebraska included within the group when the number of  
20 lives in the group exceeds five hundred. The tax shall also apply to  
21 premiums received by domestic companies for insurance written on  
22 individuals residing outside this state or risks located outside this  
23 state if no comparable tax is paid by the direct writing domestic  
24 company to any other appropriate taxing authority. Companies whose  
25 scheme of operation contemplates the return of a portion of premiums  
26 to policyholders, without such policyholders being claimants under the  
27 terms of their policies, may deduct such return premiums or dividends

1 from their gross premiums for the purpose of tax calculations. Any  
2 such insurance company shall receive a credit on the tax imposed as  
3 provided in the Community Development Assistance Act, ~~and~~ section  
4 77-27,222, and section 3 of this act.

5 Sec. 2. Section 77-2701, Revised Statutes Cumulative  
6 Supplement, 2006, is amended to read:

7 77-2701. Sections 77-2701 to 77-27,135.01, 77-27,222, and  
8 77-27,228 to 77-27,235 and section 3 of this act shall be known and  
9 may be cited as the Nebraska Revenue Act of 1967.

10 Sec. 3. A taxpayer shall be allowed a refundable credit  
11 against the individual income tax, corporate income tax, premium or  
12 related retaliatory tax, or franchise tax equal to five percent of  
13 the capital gain recognized by the taxpayer on the sale of real  
14 property sold for ultimate use for recreational purposes if the  
15 recreational use will include public access.

16 Sec. 4. Section 77-2715.07, Revised Statutes Cumulative  
17 Supplement, 2006, is amended to read:

18 77-2715.07. (1) There shall be allowed to qualified resident  
19 individuals as a nonrefundable credit against the income tax imposed  
20 by the Nebraska Revenue Act of 1967:

21 (a) A credit equal to the federal credit allowed under  
22 section 22 of the Internal Revenue Code; and

23 (b) A credit for taxes paid to another state as provided in  
24 section 77-2730.

25 (2) There shall be allowed to qualified resident individuals  
26 against the income tax imposed by the Nebraska Revenue Act of 1967:

27 (a) For returns filed reporting federal adjusted gross

1 incomes of greater than twenty-nine thousand dollars, a nonrefundable  
2 credit equal to twenty-five percent of the federal credit allowed  
3 under section 21 of the Internal Revenue Code of 1986, as amended;

4 (b) For returns filed reporting federal adjusted gross  
5 income of twenty-nine thousand dollars or less, a refundable credit  
6 equal to a percentage of the federal credit allowable under section 21  
7 of the Internal Revenue Code of 1986, as amended, whether or not the  
8 federal credit was limited by the federal tax liability. The  
9 percentage of the federal credit shall be one hundred percent for  
10 incomes not greater than twenty-two thousand dollars, and the  
11 percentage shall be reduced by ten percent for each one thousand  
12 dollars, or fraction thereof, by which the reported federal adjusted  
13 gross income exceeds twenty-two thousand dollars;

14 (c) A refundable credit for individuals who qualify for an  
15 income tax credit as an owner of agricultural assets under the  
16 Beginning Farmer Tax Credit Act for all taxable years beginning or  
17 deemed to begin on or after January 1, 2001, under the Internal  
18 Revenue Code of 1986, as amended; and a refundable credit as provided  
19 in section 77-5209.01 for individuals who qualify for an income tax  
20 credit as a qualified beginning farmer or livestock producer under the  
21 Beginning Farmer Tax Credit Act for all taxable years beginning or  
22 deemed to begin on or after January 1, 2006, under the Internal  
23 Revenue Code of 1986, as amended;

24 (d) A refundable credit for individuals who qualify for an  
25 income tax credit under the Nebraska Advantage Microenterprise Tax  
26 Credit Act or the Nebraska Advantage Research and Development Act; and

27 (e) A refundable credit equal to eight percent of the

1 federal credit allowed under section 32 of the Internal Revenue Code  
2 of 1986, as amended.

3 (3) There shall be allowed to all individuals as a  
4 nonrefundable credit against the income tax imposed by the Nebraska  
5 Revenue Act of 1967:

6 (a) A credit for personal exemptions allowed under section  
7 77-2716.01; and

8 (b) A credit for contributions to certified community  
9 betterment programs as provided in the Community Development  
10 Assistance Act. Each partner, each shareholder of an electing  
11 subchapter S corporation, each beneficiary of an estate or trust, or  
12 each member of a limited liability company shall report his or her  
13 share of the credit in the same manner and proportion as he or she  
14 reports the partnership, subchapter S corporation, estate, trust, or  
15 limited liability company income.

16 (4) There shall be allowed as a credit against the income  
17 tax imposed by the Nebraska Revenue Act of 1967:

18 (a) A credit to all resident estates and trusts for taxes  
19 paid to another state as provided in section 77-2730; and

20 (b) A credit to all estates and trusts for contributions to  
21 certified community betterment programs as provided in the Community  
22 Development Assistance Act.

23 (5) There shall be allowed to all business firms as a credit  
24 against the income tax imposed by the Nebraska Revenue Act of 1967 a  
25 credit as provided in section 77-27,222.

26 (6) There shall be allowed to all taxpayers as a  
27 nonrefundable credit against the income tax imposed by the Nebraska

1 Revenue Act of 1967 a credit as provided in section 3 of this act.

2 Sec. 5. Section 77-2717, Revised Statutes Cumulative  
3 Supplement, 2006, is amended to read:

4 77-2717. (1)(a) The tax imposed on all resident estates and  
5 trusts shall be a percentage of the federal taxable income of such  
6 estates and trusts as modified in section 77-2716, plus a percentage  
7 of the federal alternative minimum tax and the federal tax on  
8 premature or lump-sum distributions from qualified retirement plans.  
9 The additional taxes shall be recomputed by (i) substituting Nebraska  
10 taxable income for federal taxable income, (ii) calculating what the  
11 federal alternative minimum tax would be on Nebraska taxable income  
12 and adjusting such calculations for any items which are reflected  
13 differently in the determination of federal taxable income, and (iii)  
14 applying Nebraska rates to the result. The federal credit for prior  
15 year minimum tax, after the recomputations required by the Nebraska  
16 Revenue Act of 1967, and the credits provided in the Nebraska  
17 Advantage Microenterprise Tax Credit Act, the Nebraska Advantage  
18 Research and Development Act, ~~and~~ section 77-27,222, and section 3  
19 of this act shall be allowed as a reduction in the income tax due. A  
20 refundable income tax credit shall be allowed for all resident  
21 estates and trusts under the Nebraska Advantage Microenterprise Tax  
22 Credit Act and the Nebraska Advantage Research and Development Act.

23 (b) The tax imposed on all nonresident estates and trusts  
24 shall be the portion of the tax imposed on resident estates and trusts  
25 which is attributable to the income derived from sources within this  
26 state. The tax which is attributable to income derived from sources  
27 within this state shall be determined by multiplying the liability to

1 this state for a resident estate or trust with the same total income  
2 by a fraction, the numerator of which is the nonresident estate's or  
3 trust's Nebraska income as determined by sections 77-2724 and 77-2725  
4 and the denominator of which is its total federal income after first  
5 adjusting each by the amounts provided in section 77-2716. The federal  
6 credit for prior year minimum tax, after the recomputations required  
7 by the Nebraska Revenue Act of 1967, reduced by the percentage of the  
8 total income which is attributable to income from sources outside this  
9 state, and the credits provided in the Nebraska Advantage  
10 Microenterprise Tax Credit Act, the Nebraska Advantage Research and  
11 Development Act, ~~and~~ section 77-27,222, and section 3 of this act  
12 shall be allowed as a reduction in the income tax due. A refundable  
13 income tax credit shall be allowed for all nonresident estates and  
14 trusts under the Nebraska Advantage Microenterprise Tax Credit Act and  
15 the Nebraska Advantage Research and Development Act.

16 (2) In all instances wherein a fiduciary income tax return  
17 is required under the provisions of the Internal Revenue Code, a  
18 Nebraska fiduciary return shall be filed, except that a fiduciary  
19 return shall not be required to be filed regarding a simple trust if  
20 all of the trust's beneficiaries are residents of the State of  
21 Nebraska, all of the trust's income is derived from sources in this  
22 state, and the trust has no federal tax liability. The fiduciary shall  
23 be responsible for making the return for the estate or trust for which  
24 he or she acts, whether the income be taxable to the estate or trust  
25 or to the beneficiaries thereof. The fiduciary shall include in the  
26 return a statement of each beneficiary's distributive share of net  
27 income when such income is taxable to such beneficiaries.

1           (3) The beneficiaries of such estate or trust who are  
2 residents of this state shall include in their income their  
3 proportionate share of such estate's or trust's federal income and  
4 shall reduce their Nebraska tax liability by their proportionate share  
5 of the credits as provided in the Nebraska Advantage Microenterprise  
6 Tax Credit Act, the Nebraska Advantage Research and Development Act,  
7 ~~and~~ section 77-27,222, and section 3 of this act. There shall be  
8 allowed to a beneficiary a refundable income tax credit under the  
9 Beginning Farmer Tax Credit Act for all taxable years beginning or  
10 deemed to begin on or after January 1, 2001, under the Internal  
11 Revenue Code of 1986, as amended.

12           (4) If any beneficiary of such estate or trust is a  
13 nonresident during any part of the estate's or trust's taxable year,  
14 he or she shall file a Nebraska income tax return which shall include  
15 (a) in Nebraska adjusted gross income that portion of the estate's or  
16 trust's Nebraska income, as determined under sections 77-2724 and  
17 77-2725, allocable to his or her interest in the estate or trust and  
18 (b) a reduction of the Nebraska tax liability by his or her  
19 proportionate share of the credits as provided in the Nebraska  
20 Advantage Microenterprise Tax Credit Act, the Nebraska Advantage  
21 Research and Development Act, ~~and~~ section 77-27,222, and section 3  
22 of this act and shall execute and forward to the fiduciary, on or  
23 before the original due date of the Nebraska fiduciary return, an  
24 agreement which states that he or she will file a Nebraska income tax  
25 return and pay income tax on all income derived from or connected with  
26 sources in this state, and such agreement shall be attached to the  
27 Nebraska fiduciary return for such taxable year.

1           (5) In the absence of the nonresident beneficiary's executed  
2 agreement being attached to the Nebraska fiduciary return, the estate  
3 or trust shall remit a portion of such beneficiary's income which was  
4 derived from or attributable to Nebraska sources with its Nebraska  
5 return for the taxable year. The amount of remittance, in such  
6 instance, shall be the highest individual income tax rate determined  
7 under section 77-2715.02 multiplied by the nonresident beneficiary's  
8 share of the estate or trust income which was derived from or  
9 attributable to sources within this state. The amount remitted shall  
10 be allowed as a credit against the Nebraska income tax liability of  
11 the beneficiary.

12           (6) The Tax Commissioner may allow a nonresident beneficiary  
13 to not file a Nebraska income tax return if the nonresident  
14 beneficiary's only source of Nebraska income was his or her share of  
15 the estate's or trust's income which was derived from or attributable  
16 to sources within this state, the nonresident did not file an  
17 agreement to file a Nebraska income tax return, and the estate or  
18 trust has remitted the amount required by subsection (5) of this  
19 section on behalf of such nonresident beneficiary. The amount remitted  
20 shall be retained in satisfaction of the Nebraska income tax liability  
21 of the nonresident beneficiary.

22           (7) For purposes of this section, unless the context  
23 otherwise requires, simple trust shall mean any trust instrument which  
24 (a) requires that all income shall be distributed currently to the  
25 beneficiaries, (b) does not allow amounts to be paid, permanently set  
26 aside, or used in the tax year for charitable purposes, and (c) does  
27 not distribute amounts allocated in the corpus of the trust. Any trust

1       which does not qualify as a simple trust shall be deemed a complex  
2       trust.

3               Sec. 6. Section 77-2734.03, Revised Statutes Cumulative  
4       Supplement, 2006, is amended to read:

5               77-2734.03. (1)(a) For taxable years commencing prior to  
6       January 1, 1997, any (i) insurer paying a tax on premiums and  
7       assessments pursuant to section 77-908 or 81-523, (ii) electric  
8       cooperative organized under the Joint Public Power Authority Act, or  
9       (iii) credit union shall be credited, in the computation of the tax  
10      due under the Nebraska Revenue Act of 1967, with the amount paid  
11      during the taxable year as taxes on such premiums and assessments and  
12      taxes in lieu of intangible tax.

13              (b) For taxable years commencing on or after January 1,  
14      1997, any insurer paying a tax on premiums and assessments pursuant to  
15      section 77-908 or 81-523, any electric cooperative organized under the  
16      Joint Public Power Authority Act, or any credit union shall be  
17      credited, in the computation of the tax due under the Nebraska Revenue  
18      Act of 1967, with the amount paid during the taxable year as (i) taxes  
19      on such premiums and assessments included as Nebraska premiums and  
20      assessments under section 77-2734.05 and (ii) taxes in lieu of  
21      intangible tax.

22              (c) For taxable years commencing or deemed to commence prior  
23      to, on, or after January 1, 1998, any insurer paying a tax on premiums  
24      and assessments pursuant to section 77-908 or 81-523 shall be  
25      credited, in the computation of the tax due under the Nebraska Revenue  
26      Act of 1967, with the amount paid during the taxable year as  
27      assessments allowed as an offset against premium and related

1 retaliatory tax liability pursuant to section 44-4233.

2 (2) There shall be allowed to corporate taxpayers a tax  
3 credit for contributions to community betterment programs as provided  
4 in the Community Development Assistance Act.

5 (3) There shall be allowed to corporate taxpayers a  
6 refundable income tax credit under the Beginning Farmer Tax Credit Act  
7 for all taxable years beginning or deemed to begin on or after January  
8 1, 2001, under the Internal Revenue Code of 1986, as amended.

9 (4) There shall be allowed to corporate taxpayers a tax  
10 credit as provided in section 77-27,222 and section 3 of this act.

11 (5) The changes made to this section by Laws 2004, LB 983,  
12 apply to motor fuels purchased during any tax year ending or deemed to  
13 end on or after January 1, 2005, under the Internal Revenue Code of  
14 1986, as amended.

15 (6) There shall be allowed to corporate taxpayers refundable  
16 income tax credits under the Nebraska Advantage Microenterprise Tax  
17 Credit Act and the Nebraska Advantage Research and Development Act.

18 Sec. 7. Section 77-3806, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 77-3806. (1) The tax return shall be filed and the total  
21 amount of the franchise tax shall be due on the fifteenth day of the  
22 third month after the end of the taxable year. No extension of time to  
23 pay the tax shall be granted. If the Tax Commissioner determines that  
24 the amount of tax can be computed from available information filed by  
25 the financial institutions with either state or federal regulatory  
26 agencies, the Tax Commissioner may, by regulation, waive the  
27 requirement for the financial institutions to file returns.

1           (2) Sections 77-2714 to 77-27,135 relating to deficiencies,  
2 penalties, interest, the collection of delinquent amounts, and appeal  
3 procedures for the tax imposed by section 77-2734.02 shall also apply  
4 to the tax imposed by section 77-3802. If the filing of a return is  
5 waived by the Tax Commissioner, the payment of the tax shall be  
6 considered the filing of a return for purposes of sections 77-2714 to  
7 77-27,135.

8           (3) No refund of the tax imposed by section 77-3802 shall be  
9 allowed unless a claim for such refund is filed within ninety days of  
10 the date on which (a) the tax is due or was paid, whichever is later,  
11 or (b) a change is made to the amount of deposits or the net financial  
12 income of the financial institution by a state or federal regulatory  
13 agency.

14           (4) Any such financial institution shall receive a credit on  
15 the franchise tax as provided under the Community Development  
16 Assistance Act, ~~and~~ section 77-27,222, and section 3 of this  
17 act.

18           Sec. 8. This act becomes operative for all taxable years  
19 beginning or deemed to begin on or after January 1, 2007, under the  
20 Internal Revenue Code of 1986, as amended.

21           Sec. 9. Original section 77-3806, Reissue Revised Statutes  
22 of Nebraska, and sections 77-908, 77-2701, 77-2715.07, 77-2717, and  
23 77-2734.03, Revised Statutes Cumulative Supplement, 2006, are  
24 repealed.